

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of DAVEYON EDWARDS, Minor.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

NIKITA EDWARDS,

Respondent,

and

BARRY HAYES,

Respondent-Appellant.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

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v

NIKITA EDWARDS,

Respondent-Appellant,

and

BARRY HAYES,

Respondent.

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UNPUBLISHED  
February 21, 2006

No. 264477  
Wayne Circuit Court  
Family Division  
LC No. 05-439843-NA

No. 264478  
Wayne Circuit Court  
Family Division  
LC No. 05-439843-NA

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from an order terminating their parental rights to Daveyon Edwards (DOB 11-3-04). We affirm in each case.

When Daveyon was approximately four months of age, respondent Edwards took him for treatment due to inconsolable crying. X-rays revealed he had acute fractures in his left leg and right wrist, and various other fractures in varying degrees of healing, including nine rib fractures, a clavicle fracture and an avulsion spinal fracture. A physician determined that these injuries were inflicted in at least three separate traumatic incidents, and opined that the baby would have presumably been extremely irritable and fussy, perhaps crying more when handled, might have had sleep and feeding problems due to pain, and would have had swelling at many of the sites, particularly the extremities. A second physician estimated that these injuries were inflicted during six separate incidents of child abuse.

Petitioner sought termination of respondents' parental rights. Following an original permanent placement custody trial, the referee found that the parents had abused or had subjected the child to abuse by a non-parent or failed to protect him, and recommended termination based on MCL 712A.19b(3)(b)(i) (parent's act caused abuse and reasonable likelihood of injury in future), (3)(g) (parent failed to provide proper care and no expectation of ability in future), (3)(j) (reasonable likelihood of harm if returned), and (3)(k) (parent abused). The referee found no evidence it would not be in the best interests of the child to terminate rights. An order terminating respondents' parental rights was subsequently entered.

First, respondent Hayes argues that the trial court erred in allowing the physicians to testify by speaker phone, noting that MCR 2.402(B) does not provide for speaker phone use at a trial absent good cause. However, MCR 3.923(E) expressly provides for use of speaker phones in child protection proceedings. Thus, this argument is without merit.

Alternatively, respondent Hayes argues that use of the speaker phone violated his right of confrontation, which he appears to associate with due process. However, the record does not indicate that his ability to address these witnesses was in any way compromised by the speaker phone procedure. Moreover, the Sixth Amendment right of confrontation does not apply in child protection proceedings, *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993), and respondent Hayes makes no argument that the Michigan Constitution should be construed more broadly. We find no violation of any constitutional right.

Next, respondent Hayes argues that the evidence did not support the termination of his parental rights because the record did not show that he caused the injuries or physically abused the child. Further, he asserts that since there was no parent-agency agreement and hence, no showing of a failure to comply, there was no clear and convincing proof that he could not offer proper care and custody, or of a reasonable likelihood that the child would be harmed if returned to his care. Moreover, he asserts that termination based on subsection (3)(k) should require a criminal conviction, rather than merely a finding that a criminal statute has been violated.

Similarly, respondent Edwards argues that termination of her parental rights was clearly erroneous since there was no evidence to establish the identity of the perpetrator of the abuse, that she knew of the abuse, that she had an opportunity to prevent it, or that, now aware of the abuse, the child would be endangered if returned to her care. She avers that she would not have sought prompt treatment for the leg if she was the abuser, and since she sought treatment on this occasion but not previously, she must not have known of the previous abuse. She maintains that the finding that the parent caused the injury or abuse is based only on conjecture, especially given that the child had numerous caregivers, and that injury to the child at the hands of someone does not establish that she failed to provide proper care and custody.

A determination that a statutory basis for termination exists is reviewed for clear error. MCR 3.977(J). *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). An error in terminating parental rights based on one statutory basis may be harmless if the court also properly found another ground for termination. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Here, while no evidence conclusively established the identity of the person or persons who injured the child, the evidence convincingly established that this infant had broken bones in various stages of healing, and that the baby would have made the caregivers aware of a problem. Respondents had acknowledged to the protective services worker that they were residing together at the time, and respondent Edwards indicated that the father was involved in the child's life on a daily basis. Thus, even if respondent Edwards had legal or actual custody, both parents were in a position to respond to the child's basic needs. There was evidence that the child would have made his needs known. Regardless of whether respondents were or were not the abusers, there was clear and convincing evidence that they did not provide proper care. Moreover, their failure to seek treatment in the face of such severe injuries or to take steps to ensure that abuse was not repeated belies any reasonable expectation that the child would be safe in their care or that they would be able to provide proper care in the future. The trial court did not clearly err in terminating respondents' parental rights.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Kathleen Jansen  
/s/ Jane E. Markey